

authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in such representative or fiduciary, or (2) there is a substitution of parties in a pending case, counsel subscribing the motion resulting in the Court's approval of the change or substitution shall thereafter be deemed first counsel of record for the representative, fiduciary, or party.

(g) Conflict of Interest: If any counsel of record (1) was involved in planning or promoting a transaction or operating an entity that is connected to any issue in a case, (2) represents more than one person with differing interests with respect to any issue in a case, or (3) is a potential witness in a case, then such counsel must either secure the informed consent of the client (but only as to items (1) and (2)); withdraw from the case; or take whatever other steps are necessary to obviate a conflict of interest or other violation of the ABA Model Rules of Professional Conduct, and particularly Rules 1.7, 1.8, and 3.7 thereof. The Court may inquire into the circumstances of counsel's employment in order to deter such violations. See Rule 201.

Rule 25. Computation of Time

(a) Computation: (1) *General:* In computing any period of time prescribed or allowed by these Rules or by direction of the Court or by any applicable statute which does not provide otherwise, the day of the act, event, or default from which a designated period of time begins to run shall not be included, and (except as provided in subparagraph (2)) the last day of the period so computed shall be included. If service is made by mail, then a period of time computed with respect to the service shall begin on the day after the date of mailing.

(2) *Saturdays, Sundays, and Holidays:* Saturdays, Sundays, and all legal holidays shall be counted, except that, (A) if the period prescribed or allowed is less than 7 days, then intermediate Saturdays, Sundays, and legal holidays in the District of Columbia shall be excluded in the computation; (B) if the last day of the period so computed is a Saturday, Sunday, or a legal holiday in the District of Columbia, then that day shall not be included and the period shall run until the end of the next day which is not a Saturday, Sunday, or such a legal holiday; and (C) if any act is required to be taken or completed no later than (or at least) a specified number of days before a date certain, then the earliest day of the period so specified shall not be included if it is a Saturday, Sunday, or a legal holiday in the District of Columbia, and the earliest such day shall be the next preceding day which is not a Saturday, Sunday, or such a legal holiday. When such a legal holiday falls on a Sunday, the next day shall be considered a holiday; and, when such a legal holiday falls on a Saturday, the preceding day shall be considered a holiday.

(3) *Cross-references:* For computation of the period within which to file a petition with the Court to redetermine a deficiency or liability, see Code Section 6213; for the period within which to file a petition in a declaratory judgment action, see Code Sections 7428, 7476, and 7478; for the period within which to file a peti-

tion in a disclosure action, see Code Section 6110; for the period within which to file a petition in a partnership action, see Code Sections 6226 and 6228; and for the period within which to file a petition in a review of failure to abate interest action, see Code Section 6404(g). See also Code Section 7502.

(b) District of Columbia Legal Holidays: The legal holidays within the District of Columbia, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows:

New Year's Day—January 1
 Birthday of Martin Luther King, Jr.—Third Monday in January
 Inauguration Day—Every fourth year
 Washington's Birthday—Third Monday in February
 Memorial Day—Last Monday in May
 Independence Day—July 4
 Labor Day—First Monday in September
 Columbus Day—Second Monday in October
 Veterans Day—November 11
 Thanksgiving Day—Fourth Thursday in November
 Christmas Day—December 25

(c) Enlargement or Reduction of Time: Unless precluded by statute, the Court in its discretion may make longer or shorter any period provided by these Rules. As to continuances, see Rule 133. Where a motion is made concerning jurisdiction or the sufficiency of a pleading, the time for filing a response to that pleading shall begin to run from the date of service of the order disposing of the motion by the Court, unless the Court shall direct otherwise. Where the dates for filing briefs are fixed, an extension of time for filing a brief or the granting of leave to file a brief after the due date shall correspondingly extend the time for filing any other brief due at the same time and for filing succeeding briefs, unless the Court shall order otherwise. The period fixed by statute, within which to file a petition with the Court to redetermine a deficiency or liability, cannot be extended by the Court.

(d) Miscellaneous: With respect to the computation of time, see also Rule 3(e) (definition), Rule 10(d) (business hours of the Court), Rule 13(c) (filing of petition), and Rule 133 (continuances).

EFFECTIVE DATE OF AMENDMENT

Amendment of par. (a)(3) effective with respect to actions for review of Commissioner's failure to abate interest pertaining to requests for abatement after July 30, 1996.

TITLE IV.—PLEADINGS

Rule 30. Pleadings Allowed

There shall be a petition and an answer, and, where required under these Rules, a reply. No other pleading shall be allowed, except that the Court may permit or direct some other responsive pleading. (See Rule 175(b) as to small tax cases.)

Rule 31. General Rules of Pleading

(a) Purpose: The purpose of the pleadings is to give the parties and the Court fair notice of the matters in controversy and the basis for their respective positions.

(b) Pleading to Be Concise and Direct: Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading are required.

(c) Consistency: A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may state as many separate claims or defenses as the party has regardless of consistency or the grounds on which based. All statements shall be made subject to the signature requirements of Rules 23(a)(3) and 33.

(d) Construction of Pleadings: All pleadings shall be so construed as to do substantial justice.

Rule 32. Form of Pleadings

(a) Caption; Names of Parties: Every pleading shall contain a caption setting forth the name of the Court (United States Tax Court), the title of the case, the docket number after it becomes available (see Rule 35), and a designation to show the nature of the pleading. In the petition, the title of the case shall include the names of all parties, but shall not include as a party-petitioner the name of any person other than the person or persons by or on whose behalf the petition is filed. In other pleadings, it is sufficient to state the name of the first party with an appropriate indication of other parties.

(b) Separate Statement: All averments of claim or defense, and all statements in support thereof, shall be made in separately designated paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single item or a single set of circumstances. Such paragraph may be referred to by that designation in all succeeding pleadings. Each claim and defense shall be stated separately whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits: Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Other Provisions: With respect to other provisions relating to the form and style of papers filed with the Court, see Rules 23, 56(a), 57(a), 210(d), 220(d), and 240(d).

Rule 33. Signing of Pleadings

(a) Signature: Each pleading shall be signed in the manner provided in Rule 23. Where there is more than one attorney of record, the signature of only one is required. Except when otherwise specifically directed by the Court, pleadings need not be verified or accompanied by affidavit.

(b) Effect of Signature: The signature of counsel or a party constitutes a certificate by the signer that the signer has read the pleading, that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is war-

ranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The signature of counsel also constitutes a representation by counsel that counsel is authorized to represent the party or parties on whose behalf the pleading is filed. If a pleading is not signed, it shall be stricken, unless it is signed promptly after the omission is called to the attention of the pleader. If a pleading is signed in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable counsel's fees.

Rule 34. Petition

(a) General: (1) *Deficiency or Liability Actions:* The petition with respect to a notice of deficiency or a notice of liability shall be substantially in accordance with Form 1 shown in Appendix I, and shall comply with the requirements of these Rules relating to pleadings. Ordinarily, a separate petition shall be filed with respect to each notice of deficiency or each notice of liability. However, a single petition may be filed seeking a redetermination with respect to all notices of deficiency or liability directed to one person alone or to such person and one or more other persons or to a husband and a wife individually, except that the Court may require a severance and a separate case to be maintained with respect to one or more of such notices. Where the notice of deficiency or liability is directed to more than one person, each such person desiring to contest it shall file a petition, either separately or jointly with any such other person, and each such person must satisfy all the requirements of this Rule in order for the petition to be treated as filed by or for such person. The petition shall be complete, so as to enable ascertainment of the issues intended to be presented. No telegram, cablegram, radiogram, telephone call, electronically transmitted copy, or similar communication will be recognized as a petition. Failure of the petition to satisfy applicable requirements may be ground for dismissal of the case. As to the joinder of parties, see Rule 61; and as to the effect of misjoinder of parties, see Rule 62. For the circumstances under which a timely mailed petition will be treated as having been timely filed, see Code Section 7502.

(2) *Other Actions:* For the requirements relating to the petition in declaratory judgment actions, in disclosure actions, in partnership actions, in administrative costs actions, or in review of failure to abate interest actions, see Rules 211(b), 221(b), 241(b), 271(b), and 281(b), respectively. As to joinder of parties in declaratory judgment actions, in disclosure actions and in partnership actions, see Rules 215, 226, and 241(h), respectively.

(b) Content of Petition in Deficiency or Liability Actions: The petition in a deficiency or li-

ability action shall contain (see Form 1, Appendix I):

(1) In the case of a petitioner other than a corporation, the petitioner's name and legal residence; in the case of a corporate petitioner, its name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address and identification number (e.g., Social Security number or employer identification number) and the office of the Internal Revenue Service with which the tax return for the period in controversy was filed. The mailing address, legal residence, principal place of business, or principal office or agency shall be stated as of the date of filing the petition. In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition.

(2) The date of the notice of deficiency or liability, or other proper allegations showing jurisdiction in the Court, and the City and State of the office of the Internal Revenue Service which issued the notice.

(3) The amount of the deficiency or liability, as the case may be, determined by the Commissioner, the nature of the tax, the year or years or other periods for which the determination was made; and, if different from the Commissioner's determination, the approximate amount of taxes in controversy.

(4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the assignments of error shall be deemed to be conceded. Each assignment of error shall be separately lettered.

(5) Clear and concise lettered statements of the facts on which petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(6) A prayer setting forth relief sought by the petitioner.

(7) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(8) A copy of the notice of deficiency or liability, as the case may be, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of deficiency or liability or accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the issues raised by the assignments of error likewise shall be appended to the petition.

A claim for reasonable litigation or administrative costs shall not be included in the petition in a deficiency or liability action. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

(c) Content of Petition in Other Actions: For the requirements as to the content of the petition in other actions, see Rule 211(c), (d), and (e), Rule 221(c), (d), and (e), Rule 241(c), (d), and (e), Rule 271(b), and Rule 281(b).

(d) Number Filed: For each petition filed, there shall be a signed original together with two conformed copies.

EFFECTIVE DATE OF AMENDMENT

Amendment of par. (a)(2) effective with respect to petitions filed after Aug. 1, 1998, except that reference to actions for review of Commissioner's failure to abate interest are effective with respect to such actions pertaining to requests for abatement after July 30, 1996.

Amendment of par. (b)(4) effective with respect to petitions filed after Aug. 1, 1998. Amendment of par. (c) effective with respect to actions for review of Commissioner's failure to abate interest pertaining to requests for abatement after July 30, 1996.

Rule 35. Entry on Docket

Upon receipt of the petition by the Clerk, the case will be entered upon the docket and assigned a number, and the parties will be notified thereof by the Clerk. The docket number shall be placed by the parties on all papers thereafter filed in the case, and shall be referred to in all correspondence with the Court.

Rule 36. Answer

(a) Time to Answer or Move: The Commissioner shall have 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Commissioner shall have like periods from the date of service of those papers within which to answer or move in response thereto, except as the Court may otherwise direct.

(b) Form and Content: The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition; however, if the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the Commissioner shall so state, and such statement shall have the effect of a denial. If the Commissioner intends to qualify or to deny only a part of an allegation, then the Commissioner shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(c) Effect of Answer: Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

(d) Declaratory Judgment, Disclosure, and Administrative Costs Actions: For the requirements applicable to the answer in declaratory judgment actions, in disclosure actions, and in ad-

ministrative costs actions, see Rules 213(a), 223(a), and 272(a), respectively.

Rule 37. Reply

(a) **Time to Reply or Move:** The petitioner shall have 45 days from the date of service of the answer within which to file a reply, or 30 days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

(b) **Form and Content:** In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply shall contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the petitioner shall so state, and such statement shall have the effect of a denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects the requirements of pleading applicable to the answer provided in Rule 36(b) shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

(c) **Effect of Reply or Failure Thereof:** Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied unless the Commissioner, within 45 days after expiration of the time for filing the reply, files a motion that specified allegations in the answer be deemed admitted. That motion will be served on the petitioner and may be granted unless the required reply is filed within the time directed by the Court.

(d) **New Material:** Any new material contained in the reply shall be deemed to be denied.

(e) **Declaratory Judgment, Disclosure, and Administrative Costs Actions:** For the requirements applicable to the reply in declaratory judgment actions and in disclosure actions, see Rules 213(b) and 223(b), respectively. See Rule 272(b) with respect to replies in actions for administrative costs.

Rule 38. Joinder of Issue

A case shall be deemed at issue upon the filing of the answer, unless a reply is required under Rule 37, in which event it shall be deemed at issue upon the filing of a reply or the entry of an order disposing of a motion under Rule 37(c) or the expiration of the period specified in Rule 37(c) in case the Commissioner fails to move. With respect to declaratory judgment actions, disclosure actions, partnership actions, and administrative costs actions, see Rules 214, 224, 244, and 273, respectively.

Rule 39. Pleading Special Matters

A party shall set forth in the party's pleading any matter constituting an avoidance or affirmative defense, including *res judicata*, collateral estoppel, estoppel, waiver, duress, fraud, and the statute of limitations. A mere denial in a responsive pleading will not be sufficient to raise any such issue.

Rule 40. Defenses and Objections Made by Pleading or Motion

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion: (a) lack of jurisdiction, and (b) failure to state a claim upon which relief can be granted. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, then such party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting failure to state a claim on which relief can be granted, matters outside the pleading are to be presented, then the motion shall be treated as one for summary judgment and disposed of as provided in Rule 121, and the parties shall be given an opportunity to present all material made pertinent to a motion under Rule 121.

Rule 41. Amended and Supplemental Pleadings

(a) **Amendments:** A party may amend a pleading once as a matter of course at any time before a responsive pleading is served. If the pleading is one to which no responsive pleading is permitted and the case has not been placed on a trial calendar, then a party may so amend it at any time within 30 days after it is served. Otherwise a party may amend a pleading only by leave of Court or by written consent of the adverse party, and leave shall be given freely when justice so requires. No amendment shall be allowed after expiration of the time for filing the petition, however, which would involve conferring jurisdiction on the Court over a matter which otherwise would not come within its jurisdiction under the petition as then on file. A motion for leave to amend a pleading shall state the reasons for the amendment and shall be accompanied by the proposed amendment. The amendment to the pleading shall not be incorporated into the motion but rather shall be separately set forth and consistent with the requirements of Rule 23 regarding form and style of papers filed with the Court. See Rules 36(a) and 37(a) for time for responding to amended pleadings.

(b) Amendments to Conform to the Evidence:

(1) *Issues Tried by Consent:* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. The Court, upon motion of any party at any time, may allow such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues, but failure to amend does not affect the result of the trial of these issues.

(2) *Other Evidence:* If evidence is objected to at the trial on the ground that it is not within the

issues raised by pleadings, then the Court may receive the evidence and at any time allow the pleadings to be amended to conform to the proof, and shall do so freely when justice so requires and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice such party in maintaining such party's position on the merits.

(3) **Filing:** The amendment or amended pleadings permitted under this paragraph (b) shall be filed with the Court at the trial or shall be filed with the Clerk at Washington, D.C., within such time as the Court may fix.

(c) **Supplemental Pleadings:** Upon motion of a party, the Court may, upon such terms as are just, permit a party to file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statements of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, then it shall so direct, specifying the time therefor.

(d) **Relation Back of Amendments:** When an amendment of a pleading is permitted, it shall relate back to the time of filing of that pleading, unless the Court shall order otherwise either on motion of a party or on its own initiative.

TITLE V.—MOTIONS

Rule 50. General Requirements

(a) **Form and Content of Motion:** An application to the Court for an order shall be by motion in writing, which shall state with particularity the grounds therefor and shall set forth the relief or order sought. The motion shall show that prior notice thereof has been given to each other party or counsel for each other party and shall state whether there is any objection to the motion. If a motion does not include such a statement, the Court will assume that there is an objection to the motion. Unless the Court directs otherwise, motions made during a hearing or trial need not be in writing. The rules applicable to captions, signing, and other matters of form and style of pleadings apply to all written motions. See Rules 23, 32, and 33(a). The effect of a signature on a motion shall be as set forth in Rule 33(b).

(b) **Disposition of Motions:** A motion may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take action after directing that a written response be filed. In that event, the motion shall be served upon the opposing party, who shall file such response within such period as the Court may direct. Written response to a motion shall conform to the same requirements of form and style as apply to motions.

(2) The Court may take action after directing a hearing, which normally will be held in Washington, D.C. The Court may, on its own motion or upon the written request of any party to the motion, direct that the hearing be held at some other location which serves the convenience of the parties and the Court.

(3) The Court may take such action as the Court in its discretion deems appropriate, on such prior notice, if any, which the Court may consider reasonable. The action of the Court may be taken with or without written response, hearing, or attendance of a party to the motion at the hearing.

(c) **Attendance at Hearings:** If a motion is noticed for hearing, then a party to the motion may, prior to or at the time for such hearing, submit a written statement of such party's position together with any supporting documents. Such statement may be submitted in lieu of or in addition to attendance at the hearing.

(d) **Defects in Pleading:** Where the motion or order is directed to defects in a pleading, prompt filing of a proper pleading correcting the defects may obviate the necessity of a hearing thereon.

(e) **Postponement of Trial:** The filing of a motion shall not constitute cause for postponement of a trial. With respect to motions for continuance, see Rule 133.

(f) **Service of Motions:** The rules applicable to service of pleadings apply to service of motions. See Rule 21; for the rules applicable to service of papers in partnership actions, see Rule 246.

EFFECTIVE DATE OF AMENDMENT

Amendment of par. (a) effective with respect to motions filed after July 1, 1986.

Rule 51. Motion for More Definite Statement

(a) **General:** If a pleading to which a responsive pleading is permitted or required is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, then the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. See Rules 70 and 90 for procedures available to narrow the issues or to elicit further information as to the facts involved or the positions of the parties.

(b) **Penalty for Failure of Response:** The Court may strike the pleading to which the motion is directed or may make such other order as it deems just, if the required response is not made within such period as the Court may direct.

Rule 52. Motion to Strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 30 days after the service of the pleading, or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, frivolous, or scandalous matter. In like manner and procedure, the Court may order stricken any such objectionable matter from briefs, documents, or any other papers or responses filed with the Court.

Rule 53. Motion to Dismiss

A case may be dismissed for cause upon motion of a party or upon the Court's initiative.

Rule 54. Timely Filing and Joinder of Motions

Motions must be made timely, unless the Court shall permit otherwise. Motions shall be